

STATE OF WISCONSIN  
PSYCHOLOGY EXAMINING BOARD

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IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE  
PROCEEDINGS BEFORE THE : PSYCHOLOGY EXAMINING BOARD  
PSYCHOLOGY EXAMINING BOARD : ADOPTING RULES  
: (CLEARINGHOUSE RULE )

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PROPOSED ORDER

An order of the Psychology Examining Board to repeal Psy 5.01 (18), and (33) (a) to (e) and Psy 5.02; to amend Psy 5.01 (2), (5), (8), (24), (25), 28), (29), (30) (c), (33) (intro.) and (34); to repeal and replace Psy 5.01 (17) and (32); and to create Psy 5.01 (2m) and (12m) relating to unprofessional conduct.

Analysis prepared by the Department of Safety and Professional Services.

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ANALYSIS

**Statutes interpreted:** s. 455.09, stats.

**Statutory authority:** ss. 15.08 (5) (b) and 455.08, Stats.

**Explanation of agency authority:**

§ 15.08(5)(b) Each examining board shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains, and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession.

§ 455.08 The examining board shall adopt such rules as are necessary under this chapter

**Related statute or rule:** n/a

**Plain language analysis:**

This rule updates the unprofessional conduct rules which have not had a comprehensive review and update since 2003.

Sections 1 and 3 add private practice of school psychology to reflect the other license under the jurisdiction of the board.

Section 2 clarifies that engaging in conduct that falls below the standard of minimal competence is unprofessional conduct.

Section 4 adds exploitative billing practices as conduct which is unprofessional conduct.

Section 5 clarifies it is unprofessional conduct to not have security protocols in place for access to information received from a client recognizing that current psychology practice includes electronic forms of communication which need to have security protocols to protect confidential matters.

Section 6 repeals and recreates the provision relating to prohibited dual relationships to clarify the prohibited dual relationships are those reasonably likely to impair objectivity while providing services. This modification is recognizing that there are natural dual relationships which do not impair objectivity and would be difficult to avoid particularly in rural areas.

Section 7 simplifies the requirement for licensees to respond to requests from the board.

Section 8 modifies “impersonation” to “appropriation of the identity” for clarification purposes.

Section 9 states it is unprofessional conduct to violate chapter 455, stats. or any rule of the board.

Section 10 cleans up the language relating to the duty to report disciplinary or adverse action taken by another jurisdiction.

Section 11 updates the language for “a” prohibited dual relationship to “any” prohibited dual relationship.

Section 12 clarifies the unprofessional conduct provision relating to disciplinary or adverse action in another jurisdiction.

Sections 13 and 14 repeal the list of items which were required to be contained in a record.

Section 15 states it is unprofessional conduct to violate an order of any board or jurisdiction which regulates the practice of psychology or school psychology. It removes the provision relating to unprofessional conduct is the violation of rule or statute as it is addressed elsewhere in the rule and therefore it was redundant.

Section 16 repeals the actions subsequent to disciplinary proceedings as it is an undue burden to require licensees to notify all clients when any disciplinary action is taken and specific disciplinary orders may include a notification requirement where necessary.

**Summary of, and comparison with, existing or proposed federal regulation:** None

**Comparison with rules in adjacent states:**

**Illinois:** Illinois defines unprofessional conduct. Illinois provisions which relate to this updated rule include: failure to provide techniques or procedures used in professional activities to the board upon request; and impersonating another person holding a license.

**Iowa:** Iowa defines unprofessional conduct. Iowa provisions which relate to this updated rule include: failure to conform to the minimal standard of acceptable and prevailing practice; failure to respond to the board within 30 days of communication from the board; violation of any law or rule of Iowa or another state; and failure to notify the board of discipline by other jurisdictions.

**Michigan:** Michigan defines unprofessional conduct. Michigan provision which relates to this updated rule include: prohibiting engaging in a multiple relationship when there is a reasonable risk of harm or exploitation.

**Minnesota:** Minnesota defines unprofessional conduct. Minnesota provisions which relate to this updated rule include: failure to provide competent provision of services; safeguarding the private information obtained in the course of the practice of psychology; and prohibit engaging in situations involving impaired objectivity or effectiveness. Minnesota does have a list of required elements to be maintained in a psychology patient record.

### **Summary of factual data and analytical methodologies:**

The board reviewed the rule to ensure the rules reflect current practice in the profession.

### **Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:**

This rule was posted for economic comments and none were received. This rule relates to unprofessional conduct.

### **Fiscal Estimate and Economic Impact Analysis:**

The Fiscal Estimate and Economic Impact Analysis is attached.

### **Effect on small business:**

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at [Kirsten.Reader@wisconsin.gov](mailto:Kirsten.Reader@wisconsin.gov), or by calling (608) 267-2435.

### **Agency contact person:**

Sharon Henes, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-261-2377; email at [DSPSAdminRules@wisconsin.gov](mailto:DSPSAdminRules@wisconsin.gov).

### **Place where comments are to be submitted and deadline for submission:**

Comments may be submitted to Sharon Henes, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy, 1400 East Washington Avenue, Room 151,

P.O. Box 8366, Madison, WI 53708-8366, or by email to DSPSAdminRules@wisconsin.gov. Comments must be received at or before the public hearing to be held on November 29, 2017 to be included in the record of rule-making proceedings.

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TEXT OF RULE

SECTION 1. Psy 5.01 (2) is amended to read:

Psy 5.01 (2) Gross negligence in the practice of psychology or private practice of school psychology.

SECTION 2. Psy 5.01 (2m) is created to read:

Psy 5.01 (2m) Engaging in conduct that falls below the standard of minimal competence within the practice of psychology or school psychology.

SECTION 3. Psy 5.01 (5) is amended to read:

**Psy 5.01 (5)** Conviction of a crime or violation of any law the circumstances of which substantially relate to the circumstances of the ~~professional~~ practice of psychology or private practice of school psychology.

SECTION 4. Psy 5.01 (8) is amended to read:

**Psy 5.01 (8)** Engaging in false, fraudulent, exploitative, misleading or deceptive billing practices.

SECTION 5. Psy 5.01 (12m) is created to read:

Psy 5.01 (12m) Failing to have security protocols for access to facts, data, information, records or communication received from a client in a professional capacity.

SECTION 6. Psy 5.01 (17) is repealed and recreated to read:

Psy 5.01(17) Engaging in any prohibited dual relationship or any relationship which is reasonably likely to impair the licensee's objectivity in providing professional services.

**Repeal Psy 5.01 (18)**

SECTION 7. Psy 5.01 (24) is amended to read:

**Psy 5.01 (24)** Failure to respond honestly and in a timely manner to a request for information ~~from the board or with any other request for information~~ by the board. Taking longer than 30 days to respond creates a rebuttable presumption that the response is not timely.

SECTION 8. Psy 5.01 (25) is amended to read:

**Psy 5.01 (25)** ~~Impersonation~~ Appropriation of the identity of another person holding a license issued by this or another board.

SECTION 9. Psy 5.01 (28) is amended to read:

Psy 5.01 (28) Violation of ch. 455, Stats., or any rule ~~of professional conduct promulgated under ch. 455, Stats.~~ promulgated by the board.

SECTION 10. Psy 5.01 (29) is amended to read:

**Psy 5.01 (29)** Failure to notify the board within 30 days of having a license, certificate, permit or registration ~~any disciplinary or adverse action taken by any other jurisdiction against a license, certificate, permit or registration granted by this or any other state~~ for the practice of psychology or school psychology ~~limited, restricted, suspended or revoked, or having been subject to other disciplinary action by the licensing or certifying authority thereof.~~

SECTION 11. Psy 5.01 (30) (c) is amended to read:

**Psy 5.01 (30) (c)** Failure to avoid ~~a~~ any prohibited dual relationship or any relationship which is reasonably likely to impair the licensee's objectivity in providing professional services.

SECTION 12. Psy 5.01 (32) is repeal and recreated to read:

**Psy 5.01 (32)** Having a credential granted by another jurisdiction to practice psychology or school psychology denied, limited, suspended, surrendered or revoked, or otherwise disciplined or adverse action taken, whether or not accompanied by findings of negligence or unprofessional conduct.

SECTION 13. Psy 5.01 (33) (intro) is amended to read:

Psy 5.01 (33) (intro) Failure to maintain adequate records relating to services provided to a client in the course of a professional relationship. Each patient record entry shall be dated, shall identify the treating ~~therapist~~ psychologist, and shall be sufficiently legible to be understood and to allow interventions by other professionals. Unless records are subject to a different records retention policy by an entity with an obligation to maintain treatment records, a licensee shall retain treatment records for at least 7 years. ~~Such records shall contain all of the following:~~

SECTION 14. Psy 5.01 (33) (a) through (e) are repealed.

SECTION 15. Psy 5.01 (34) is amended to read:

**Psy 5.01 (34)** Violating any provision ~~of ch. 455, Stats., or any rule or an order of any board or jurisdiction which regulates the practice of psychology or school psychology.~~

SECTION 16. Psy 5.02 is repealed.

SECTION 17. EFFECTIVE DATE. The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, pursuant to s. 227.22 (2) (intro.), Stats.

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(END OF TEXT OF RULE)

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## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

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1. Type of Estimate and Analysis

Original    Updated    Corrected

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2. Administrative Rule Chapter, Title and Number

Psy 5

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3. Subject

Unprofessional conduct

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4. Fund Sources Affected

GPR    FED    PRO    PRS    SEG    SEG-S

5. Chapter 20, Stats. Appropriations Affected

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6. Fiscal Effect of Implementing the Rule

No Fiscal Effect    Increase Existing Revenues    Increase Costs  
 Indeterminate    Decrease Existing Revenues    Could Absorb Within Agency's Budget  
 Decrease Cost

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7. The Rule Will Impact the Following (Check All That Apply)

State's Economy    Specific Businesses/Sectors  
 Local Government Units    Public Utility Rate Payers  
 Small Businesses (if checked, complete Attachment A)

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8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes    No

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9. Policy Problem Addressed by the Rule

The rule updates the unprofessional conduct chapter to reflect current practice. This chapter has not had a comprehensive review and update in the last 10 years.

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10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

This rule was posted for economic comments and none were received.

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11. Identify the local governmental units that participated in the development of this EIA.

None

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12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

This rule will not have any economic or fiscal impact on specific businesses, business sectors, public utility rate payers, local governmental units or the State's economy as a whole.

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13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

The benefit of implementing the rule is to have clear and current unprofessional conduct standards.

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14. Long Range Implications of Implementing the Rule

The long range implication is current unprofessional conduct standards.

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15. Compare With Approaches Being Used by Federal Government

None

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16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

**Illinois:** Illinois defines unprofessional conduct. Illinois provisions which relate to this updated rule include: failure to provide techniques or procedures used in professional activities to the board upon request; and impersonating another person holding a license.

**Iowa:** Iowa defines unprofessional conduct. Iowa provisions which relate to this updated rule include: failure to conform to the minimal standard of acceptable and prevailing practice; failure to respond to the board within

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**ADMINISTRATIVE RULES**  
**Fiscal Estimate & Economic Impact Analysis**

30 days of communication from the board; violation of any law or rule of Iowa or another state; and failure to notify the board of discipline by other jurisdictions.

**Michigan:** Michigan defines unprofessional conduct. Michigan provision which relates to this updated rule include: prohibiting engaging in a multiple relationship when there is a reasonable risk of harm or exploitation.

**Minnesota:** Minnesota defines unprofessional conduct. Minnesota provisions which relate to this updated rule include: failure to provide competent provision of services; safeguarding the private information obtained in the course of the practice of psychology; and prohibit engaging in situations involving impaired objectivity or effectiveness. Minnesota does have a list of required elements to be maintained in a psychology patient record.

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17. Contact Name

Sharon Henes

18. Contact Phone Number

(608) 261-2377

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This document can be made available in alternate formats to individuals with disabilities upon request.

**ADMINISTRATIVE RULES**  
**Fiscal Estimate & Economic Impact Analysis**

**ATTACHMENT A**

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1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

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2. Summary of the data sources used to measure the Rule's impact on Small Businesses

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3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
  - Less Stringent Schedules or Deadlines for Compliance or Reporting
  - Consolidation or Simplification of Reporting Requirements
  - Establishment of performance standards in lieu of Design or Operational Standards
  - Exemption of Small Businesses from some or all requirements
  - Other, describe:
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4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

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5. Describe the Rule's Enforcement Provisions

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6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes    No
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